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Supreme Court, U.S.
FILED

97-10 APR 3 1997

NO. ~~OFFICE OF THE~~ CLERK

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1996

Carmen G. Salazar,

Petitioner

vs.

Bill Cassel,

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF NEW MEXICO

PETITION FOR WRIT OF CERTIORARI

Carmen G. Salazar
P. O. Box 37383
Albuquerque, NM 87176
505/872-1031

21pp

QUESTIONS PRESENTED

1. Whether after the Petitioner having presented evidence of unlawful removal as material issue of fact, the Summary Calendar assignment violated the requirements of the Fourteenth Amendment.

2. Whether the Courts in excluding the police report filed on January 18, 1996 caused irreversible error affecting substantial rights of Petitioner.

3. Whether the Courts have erred in not addressing the pattern of harassment conducted by Respondent towards Petitioner.

4. Whether the order from the District Court remanding and the order of exemption from the Metropolitan Court both issued before the time for appeal had expired, violated the requirements of the Fourteenth Amendment.

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STATUTES

United States Code
Title 28, Section 1257 2

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OPINIONS BELOW

The unpublished opinion of the Supreme Court of the State of New Mexico appears in Appendix A to this petition. The Memorandum Opinion in the Court of Appeals of the State of New Mexico appears in Appendix B. The Calendar Notice in the Court of Appeals of the State of New Mexico appears in Appendix C. The Order in the Supreme Court of the State of New Mexico transferring the appeal to the Court of Appeals appears in Appendix D. The Order in the Second Judicial District Court, State of New Mexico appears in Appendix E. The Judgment in the Metropolitan Court, County of Bernalillo, State of New Mexico appears in Appendix F. The Order in the Metropolitan Court, County of Bernalillo, State of New Mexico appears in Appendix G.

JURISDICTION

The New Mexico Supreme Court Order in this matter was filed on January 10, 1997. The Petition for Writ to the New Mexico Supreme Court was filed on December 18, 1996. This Court's jurisdiction is invoked under Title 28, Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix G.

STATEMENT OF THE CASE

In a hearing held on April 23, 1996, in the New Mexico Bernalillo County Metropolitan Court, Petitioner was not allowed to introduce into evidence a police report filed on January 18, 1996, as proof of vehicle tampering and harassment by Plaintiff.

The judgment was partially in favor of Plaintiff and partially in favor of defendant, however, damages and court costs totaling $365.41 were awarded to the Plaintiff.

A timely Notice of Appeal was filed with the Second Judicial District Court on May 8, 1996. Appellant's brief was filed on May 29, 1996 citing harassment and tampering with vehicle as statement of issues. Addressed in this brief was the police report of January 18, 1996. An order was issued by the court affirming the Metropolitan Court's decision citing the police report "consisted of Appellant's own statements" and remanding back to Metropolitan Court before the time for appeal had expired.

A Notice of appeal was filed with the New Mexico Supreme Court on September 17, 1996. An order transferring the appeal to the Court of Appeals was issued on September 27, 1996.

Appellant's Docketing Statment filed September 27, 1996, cited harassment, tampering with vehicle, unlawful removal and the "relevancy" of the police report as issues of the appeal. The Summary Calendar assignment was filed on October 31, 1996 citing the police report as "cumulative evidence" and not addressing the harassment issue. Appellant's Memorandum in Opposition of Summary Affirmance filed November 7, 1996, pointed out the relevancy of the police report and questioned the court's failure to address the harassment issue. The Memorandum Opinion of the New Mexico Court of Appeals filed December 2, 1996, cited the police report "related no personal observations or knowledge of the police officer" and once again ignored the harassment issue.

A Petition for Writ of Certiorari to the New Mexico Supreme Court to review the entire proceedings was filed on December 18, 1996.

Issues addressed in the Writ: The police report being "corroborative evidence" and the failure of the court's to address the harassment issue. A Denial of Writ was filed on January 10, 1997. Additional legal actions experienced by Petitioner include a Writ of Garnishment of Wages issued on December 17, 1996, that being unsuccessful a Writ of Garnishment for funds from Petitioner's bank account was issued on January 13, 1997. An order by the Bernalillo County Metropolitan Court issued on March 3, 1997, turned these funds over to Respondent. The basis for these Writs and subsequent order: the District Court order remanding to the Metropolitan Court for enforcement of the original judgment.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reason:

This petition presents critical public issues worthy as to call for an exercise of this Court's power of supervision. The issues presented to this Court for ruling is the New Mexico Supreme Court "in which a decision could be had", has by its denial of Writ, sanctioned the lower court's violation of Petitioner's Fourteenth Amendment rights. This coming after Petitioner having properly and painstakingly shown a pattern of harassment resulting in "severe emotional distress" which has yet to be addressed by the courts. Having no legal basis for exclusion of the police report, the state's highest court has gone so far as to suggest "a police officer would have had to be present to witness the unexpected criminal acts".

At stake is the "**integrity of the system**". Without the supervision of this Court, these courts are being allowed to blatantly violate the Constitution of the United States and construct their own brand of justice.

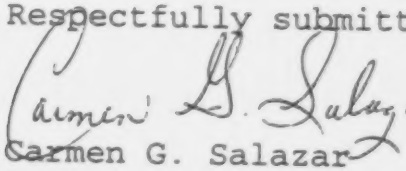
This Court should grand certiorari here to explicitly rule that those seeking to justify the constitutional restriction, in this case, The Fourteenth Amendment, will have a strict burden placed on them. Of critical importance, this court should take the opportunity to rule that those parties seeking to influence judicial decisions will be dealt with harshly. See Salazar v. The Price Company & Daymon Associates, Inc., 95-94, 116 S. Ct. (1995) Cert. Denied. See also Salazar v. W. Dean Koop, (1995), application for Writ to the United States Supreme Court rejected on basis of alleged untimeliness.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the full proceedings in this matter.

DATED: March 3, 1997

Respectfully submitted,



Carmen G. Salazar
Pro Se

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

January 10, 1997

Bill Cassel,

Respondent, **No. 24,038**

vs.

Carmen G. Salazar,

Petitioner,

ORDER

This matter coming on for consideration by the Court upon Petition for Writ of Certiorari, and the Court having considered said petition, and being sufficiently advised;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is denied in Court of Appeals number 17779.

Dated January 10, 1997 S/Kathleen Jo Gibson

Appendix A

IN THE COURT OF APPEALS OF THE

STATE OF NEW MEXICO

Bill Cassel,

Appellee, No. 17, 779

vs.

Carmen G. Salazar,

Appellant,

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

DIANE DAL SANTO, Distict Judge

Bill Cassel
Albuquerque, NM — Pro Se Appellee

Carmen G. Salazar
Albuquerque, NM — Pro Se Appellant

MEMORANDUM OPINION

FLORES, Judge.

Defendant appeals the district court order affirming the metropolitan court judgment awarding Plaintiff damages and court costs. The calendar notice proposed summary affirmance and Defendant has responded with a memorandum in opposition. Having considered Defendant's arguments, we affirm.

Defendant did not challenge the award of court costs in her appeal to the district court. This issue has been abandoned and we do not address it. See State v. Gutierrez, 121 N.M. 191, 192-93, 909 P.2d 751, 752-53 (Ct. App. 1995), cert. denied, 121 N.M. 57, 908 P.2d 750 (1996).

Defendant asserts in her memorandum that the reason the police report was not admitted into evidence was that the statements in the report were made by Defendant. The report related no personal observations or knowledge of the police officer. As such, the report was inadmissible hearsay to the extent Defendant sought to admit the report as evidence that the events she related to the police actually occurred. See NMRA 1996, 11-802. The relevance of the report to the issues Defendant raised does not make it admissible if it is hearsay that is otherwise inadmissible.

Moreover, Defendant has not disputed that the rendition of events in the report would have been cumulative of her testimony and the testimony of her witnesses at the metropolitan court trial. See NMRA 1996, 11-403. We are not persuaded that the district court erred in affirming the exclusion of the police report.

To the extent Defendant raises questions concerning asserted violations of criminal statutes, we note only that such issues are beyond the scope of the issues properly before this Court on Defendant's appeal from the district court order affirming the civil award of damages to Plaintiff.

For these reasons and those stated in the calendar notice, we affirm.

IT IS SO ORDERED.

Dated December 2, 1996. S/Benny E. Flores

IN THE COURT OF APPEALS OF THE

STATE OF NEW MEXICO

Bill Cassel,

Appellee, **No. 17,779**

vs.

Carmen G. Salazar,

Appellant,

CALENDAR NOTICE

You are hereby notified that the:

Record Proper

was filed in the above-entitled cause on October 10, 1996.

This case has been assigned to the

SUMMARY CALENDAR.

Summary affirmance is proposed.

Issues A & D:

Defendant appeals (R. P. 60) the district court's order (R.P. 57) affirming the judgment of the metropolitan court awarding Plaintiff $308.41 in damages and $57.00 in costs.

Appendix C

(R. P. 11) Plaintiff had filed a petition for restitution under the Uniform Owner-Resident Relations Act, see NMSA 1978, 47-8-42 (Repl. Pamp. 1995), which he amended to request damages in the amount of $502.91, including $57 as the costs of the court filing fee and service of summons fee (R.P. 31, 49)

It appears that Defendant filed a counter-claim, see NMSA 1978, 47-8-30(A) (Repl. Pamp. 1995), which she amended to request personal damages in the amount of $2,000 based on allegations that Plaintiff tampered with Defendant's vehicle, and interfered with various services or utilities including telephone service and disabling the bedroom door lock. (R.P. 27-28) See 47-8-30 (B) (an owner may recover court costs if the defense or counterclaim by the resident is without merit and is raised in bad faith). Cf. NMSA 1978, 47-8-32 (Repl. Pamp. 1982) (repealed effective July 1, 1995, prior to the incidents giving rise to this litigation).

Defendant's brief or statement of issues in the district court listed only two issues: harassment and tampering with a vehicle. (R.P. 51-52) Since Defendant failed to raise the issue of the award of the court costs in the appeal to the district court, this issue has been abandoned and we need not address it. See State v. Gutierrez, 121 N.M. 191, 192-93, 909 P.2d 751, 752-53 (Ct. App. 1995), cert denied, 121 N.M. 57, 908 P.2d 750 (1996); see also Newsome v. Farer, 103 N.M. 415, 419, 708 P.2d 327, 331 (1985) (Pro se litigants are "held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar.").

Even if we were to reach the merits of the issue, however, we would propose to affirm. NMSA 1978, Section 47-8-36(C)(1) (Repl. Pamp. 1995), allows a resident to abate the rent for the time the owner caused the termination or diminution of services such as telephone services.

Defendant raised the issue of interference with such services as a defense to Plaintiff's petition. In addition, however, Defendant also raised counterclaims seeking monetary relief based on allegations of harassment and tampering with her vehicle.

It appears that the metropolitan court found some merit in the defense based on Section 47-8-36(C)(1) since it did not award Plaintiff all of his requested damages. It also appears, however, that the metropolitan court found no merit in Defendant's counterclaim and determined that the counterclaim was made in bad faith since it awarded Plaintiff his costs. Defendant has not demonstrated that the metropolitan court 's implied determination that her counterclaim was without merit and made in bad faith was in error. See generally Sheraden v. Black, 107 N.M. 76, 78, 752 P.2d 791, 793 (Ct. App. 1988)

("On appeal, a reviewing court will resolve all disputed facts in favor of the successful party and all reasonable inferences will be indulged in support of the judgment below.").

Since the issue of costs was not appealed to the district court and since Defendant has failed to establish error in the award of these costs under Section 47-8-30(B), we propose to affirm the award of $57 in costs.

Issues B & C:

These issues challenge the affirmance of the ruling that the police report was not admissible into evidence. Although not specifically raised as an issue in the district court, Defendant's brief in the district court did challenge the exclusion of this evidence (R.P. 53) and, therefore, we address this issue on appeal to this court.

It appears that the report contained only statements that Defendant made to the police. (R.P. 4-7)

This evidence could have been properly excluded as inadmissible hearsay. See NMRA 1996, 11-802. Moreover, it appears to be be cumulative of other evidence including Defendant's testimony and the testimony of her witnesses at the metropolitan court trial. (Tape Log) Therefore, even if it might be considered relevant to the issues at trial, we are not persuaded of any error in ruling that the police report should not be admitted into evidence. See NMRA 1996, 11-403; see also Williams v. Williams, 109 N.M. 92, 95, 781 P.2d 1170, 1173 (Ct. App.) (Court of Appeals will affirm the decision of the trial court "when it reaches the correct result for the wrong reason."), cert. denied, 109 N.M. 54, 781 P.2d 782 (1989).

Dated October 31, 1996 S/Benny E. Flores

IN THE SUPREME COURT OF THE

STATE OF NEW MEXICO

Friday, September 27, 1996

Bill Cassel,

Appellee, No. 23,914

vs.

Carmen G. Salazar,

Appellant,

ORDER

This matter coming on for consideration by the Court upon its own motion to transfer to the New Mexico Court of Appeals and the Court and the Court having considered said motion, and being sufficiently advised;

NOW, THEREFORE, IT IS ORDERED that on the Court's own motion the appeal is transferred to the Court of Appeals for disposition.

NOW, THEREFORE, IT IS ORDERED that the record show that the docket fee in the amount of $125.00 is retained by the Supreme Court.

Dated September 27, 1996 S/Jane Gurule

SECOND JUDICIAL DISTRICT COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

Bill Cassel,

Appellee, **No. CV96-4762**

vs.

Carmen G. Salazar,

Appellant,

ORDER DENYING METRO COURT APPEAL TO THE DISTRICT COURT AND REMANDING TO THE METROPOLITAN COURT FOR ENFORCEMENT OF THE ORIGINAL JUDGMENT

THIS MATTER having come before the Court on Appellant Defendant/Counterclaimants appeal from a Metro Court judgment entered on April 23, 1996.

THIS COURT having reviewed the pleadings, the Metro Court record and statement of issues,

FINDS that the judgment in the Metropolitan Court was partially in favor of the Plaintiff on his complaint and partially in favor of the Defendant on her counterclaim/set off; Appellant is not an aggrieved party by reason of a partial ruling in her favor; Appellant's statement of issues fails to state a legal basis for the appeal and seeks relief in excess of the amount sought in the Metropolitan Court; FURTHER, no error was created by the Metropolitan Court judge in denying Appellant's offer to introduce police reports that consisted of Appellant's own statements; no error was created by the failure of the Metropolitan Court judge to deny Appellant's propensity evidence, and on appeal the Appellant may not offer new evidence not previously offered in the Metropolitan Court on fingerprints,

IT IS THEREFORE, ORDERED ADJUDGED AND DECREED that this appeal be dismissed as a matter of law and that this case be remanded back to the Metropolitan Court for enforcement of the Judgement entered on April 23, 1996.

Dated September 12, 1996 S/Diane Dal Santo

IN THE METROPOLITAN COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

Bill Cassel,

Plaintiff, **No. CV988-96**

vs.

Carmen G. Salazar,

Defendant,

JUDGMENT

This cause coming on for trial, Plaintiff appearing (in person); Defendant appearing (in person), and the Court, having heard the evidence and argument presented, finds

Partially in favor of Plaintiff on his complaint and partially in favor of Defendant on his counterclaim/set-off.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that (Plaintiff) recover the following:

Damages	$305.41
Costs	$ 57.00
Total	$365.41

Dated April 23, 1996 S/Mark Shapiro

Appendix F

IN THE METROPOLITAN COURT

COUNTY OF BERNALILLO

STATE OF NEW MEXICO

Bill Cassel,

Plaintiff, **No. CV988-97**

vs.

Carmen G. Salazar,

Defendant,

ORDER OF EXEMPTION

A hearing having been held on the claim of exemption, and the Court having heard the evidence and argument presented, and having made the necessary findings:

IT IS THEREFORE ORDERED:

The claim of exemption is allowed except as to the following items: Of $976.87 shown on Answer to Writ of Garnishment by First Security Bank of NM, the amount of $438.53 is allowed as exempt.

Dated March 3, 1997 S/Geraldine E. Rivera

Appendix G

AMENDMENT XIV TO THE U. S. CONSTITUTION

SECTION 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State herein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.